

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Part 2520**

RIN 1210-AA55

Interim Rules for Amending ERISA Disclosure Requirements for Group Health Plans; Approval of Information Collection Requirements**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.**ACTION:** Interim rules; approval of information collection requirements.

SUMMARY: On April 8, 1997, the Department of Labor published interim final rules governing disclosure requirements for private sector group health plans (62 FR 16979). The rules implemented changes made to certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA), enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA). In the April 8 publication, the Department submitted its revision of the currently approved collection regarding Summary Plan Description requirements under ERISA to the Office of Management and Budget (OMB) for emergency review under the Paperwork Reduction Act of 1995 (PRA 95). This document amends the April 8 **Federal Register** document to properly display the OMB control number, 1210-0039.

DATES: These amendments are effective June 1, 1997.**FOR FURTHER INFORMATION CONTACT:** Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, N.W., Room N-5647, Washington, D.C. 20210; telephone (202) 219-4782. (This is not a toll-free number.)**SUPPLEMENTARY INFORMATION:** The interim rules govern the content of the summary plan description (SPD) for group health plans, the furnishing of summaries of material reductions in covered services or benefits by group health plans, and the disclosure of SPD and related materials by group health plans through electronic media. The rules were adopted on an interim basis in order to accommodate statutorily established time frames for providing regulatory guidance.

OMB reviewed the Department of Labor's collection of information requirements in accordance with the

Paperwork Reduction Act of 1995 (PRA 95), 44 U.S.C. chapter 35, and 5 CFR 1320.11. On May 30, 1997, OMB approved revision of the information collection requirements contained in 29 CFR 2520.102-3, 2520.104b-1, and 2520.104b-3 under OMB control number 1210-0039. This approval expires on December 31, 1997.

Statutory Authorities

The interim regulation is adopted pursuant to authority contained in Section 505 of ERISA (Pub. L. 93-406, 88 Stat. 894, 29 U.S.C. 1135) and sections 104(b) and 734 of ERISA, as amended, (Pub. L. 104-191, 110 Stat. 1936, 1951 and Pub. L. 104-204, 110 Stat. 2935, 29 U.S.C. 1024 and 1191c) and under the Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Group health plans, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements, Welfare benefit plans.

For the reasons set forth above, Part 2520 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

1. The authority citation for Part 2520 continues to read as follows:

Authority: Sec. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93-406, 88 Stat. 840-52 and 894 (29 U.S.C. 1021-25, 1029-31, and 1135); Secretary of Labor's Order No. 27-74, 13-76, 1-87, and Labor Management Services Administration Order 2-6.

Sections 2520.102-3, 2520.104b-1 and 2520.104b-3 are also issued under sec. 101 (a), (c) and (g)(4) of Pub. L. 104-191, 110 Stat. 1936, 1939, 1951, and 1955 and sec. 603 of Pub. L. 104-204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Section 2520.102-3 is amended by adding a parenthetical at the end of the section to read as follows:

§ 2520.102-3 Contents of summary plan description.

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(Approved by the Office of Management and Budget under control number 1210-0039.)

3. Section 2520.104b-1 is amended by adding a parenthetical at the end of the section to read as follows:

§ 2520.104b-1 Disclosure.

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(Approved by the Office of Management and Budget under control number 1210-0039.)

4. Section 2520.104b-3 is amended by adding a parenthetical at the end of the section to read as follows:

§ 2520.104b-3 Summary of material modifications to the plan and changes in the information required to be included in the summary plan description.

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(Approved by the Office of Management and Budget under control number 1210-0039.)

Signed at Washington D.C. this 1st day of July, 1997.

Alan D. Lebowitz,*Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 97-17635 Filed 7-3-97; 8:45 am]

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DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 285**

RIN 1510-AA58

Collection of Past-Due Support by Administrative Offset**AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Interim rule with request for comments.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA), enacted on April 26, 1996, authorizes the Secretary of the Treasury (Secretary) to collect past-due support by the administrative offset of Federal payments. Executive Order 13019 of September 28, 1996 (Executive Order) requires that the Secretary promptly develop and implement procedures necessary for the collection of past-due support debts by administrative offset. In addition, the Executive Order requires each executive agency to review each class of payments certified by such agencies to determine whether any class of payments should be exempt from offset. With respect to any class of payments so identified, agencies must submit a request for exemption from offset to the Secretary within 30 days after the Secretary establishes standards for determining exemptions. The Executive Order further requires that Federal payment agencies and disbursing officials promptly implement any rules, regulations, or procedures issued by the Secretary that are necessary to implement offset for the collection of past-due support.

The Financial Management Service (FMS), as the central disbursing agency of the Federal Government, is

responsible for implementation of centralized administrative offset for the collection of nontax delinquent debt owed to the Federal Government, past-due support, and other debt owed to States. This regulation implements administrative offset for the collection of past-due support pursuant to the DCIA and the Executive Order.

As authorized by the DCIA, FMS intends to promulgate additional rules for centralized administrative offset for the collection of nontax debt owed to Federal and State Governments, other than child support. FMS anticipates that Part 285 will eventually contain all of the provisions relating to centralized administrative offset.

DATES: This rule is effective on July 25, 1997. Comments will be accepted until September 5, 1997.

ADDRESSES: Comments or inquiries may be mailed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street SW., Room 151, Washington, DC 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov>.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6660; Pamela Dillon, Director, Treasury Offset Program, at (202) 874-8700; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (1996), requires that disbursing officials of the Department of the Treasury and other Federal disbursing officials offset Federal payments to collect nontax delinquent debts owed to the United States. Subsection (h) of 31 U.S.C. 3716, as added by section 31001(f) of the DCIA, authorizes the Secretary of the Treasury (Secretary) to collect State debts, including past-due support, by the administrative offset of Federal payments. See also section 31001(z)(1)(B) of the DCIA, codified at 31 U.S.C. 3701(b)(2).

FMS, as the Treasury disbursing office, is responsible for implementation of centralized administrative offset for the collection of nontax debt owed to the United States, past-due support, and other State debt. On September 28, 1996, the President issued Executive Order 13019 entitled "Supporting

Families: Collecting Delinquent Child Support Obligations" (Executive Order) which requires that the Secretary promptly develop and implement procedures necessary to collect past-due support debts by administrative offset. The Executive Order recognizes that the failure of some parents to meet their child support obligations threatens the health, education, and well-being of their children and requires the collection of delinquent child support obligations from persons who may be entitled or eligible to receive certain Federal payments. FMS is publishing this interim regulation to establish and notify the public of the procedures necessary for the collection of past-due support debts by administrative offset in accordance with 31 U.S.C. 3716(h) and the Executive Order.

Federal law prohibits the use of administrative offset to collect State debts (including past-due support) for many types of Federal payments, including payments due to an individual under (a) title IV of the Higher Education Act of 1965; (b) the Social Security Act; (c) part B of the Black Lung Benefits Act; (d) any law administered by the Railroad Retirement Board; (e) the tariff laws of the United States; and (f) any other law that expressly prohibits collection of past-due support by administrative offset. Regulations promulgated by the Internal Revenue Service and the Department of Health and Human Services (HHS) govern the offsetting of Federal tax refund payments to collect past due child support as authorized under 26 U.S.C. 6402 and 42 U.S.C. 664. See 26 CFR 301.6402-5 and 45 CFR 303.72. FMS will be responsible for operation of the tax refund offset program effective January 1, 1998, and will issue new regulations governing the offset of tax refund payments to collect past-due support.

To implement the Executive Order and 31 U.S.C. 3716(h), FMS is working with HHS, Treasury and non-Treasury disbursing officials, and other affected agencies, including Federal payment agencies. The Executive Order requires that disbursing officials (officials authorized to disburse Federal payments) and payment agencies (agencies that certify Federal payments) promptly implement any rule, regulation, or procedure necessary to conduct administrative offset to collect delinquent child support payments.

Subsection (c)(3)(B) of 31 U.S.C. 3716, as added by section 31001(d)(2)(D) of the DCIA, requires the Secretary to exempt payments under means-tested programs from administrative offset when requested by the head of the

respective agency. In addition, this subsection authorizes the Secretary to exempt other payments from administrative offset upon the written request of the head of the payment certifying agency. The written request for exemption must provide justification for the exemption. Standards and instructions for making such requests are available from FMS at the above address and at the FMS web site at www.fms.treas.gov. The Executive Order requires that Federal payment agencies determine the classes and types of payments that should be considered for exemption from administrative offset by the Secretary and submit requests for exemption to FMS within 30 days of the date the Secretary prescribes standards. In acting on such requests, the Secretary will give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment agency's program. The DCIA requires that the Secretary report to the Congress annually on exemptions granted under the DCIA.

FMS is working closely with HHS to implement procedures necessary to report to the Secretary information on past-due support claims referred to HHS by States for tax refund offset purposes under 42 U.S.C. 664 and 26 U.S.C. 6402(c), including claims enforced by States pursuant to cooperative agreements with or by Indian tribal governments. Such procedures are appropriate to facilitate offset and prevent duplicative efforts by the States. FMS is also working closely with HHS to implement procedures necessary to report to the Secretary information on past-due support claims referred to HHS by States under this rule. It is anticipated that States will continue to refer debts to HHS for offset from both Federal tax refunds and other Federal payments and that HHS will report those debts to the Secretary. While nothing in this rule is intended to require States to refer debts directly to FMS for administrative offset, this rule provides States with that option.

"Past-due support" means the amount of support, determined under a court order, or an order of an administrative procedure established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid. States will have the option of directly notifying FMS of past-due support for administrative offset purposes or of notifying HHS, whereupon HHS will report those debts to FMS.

Before notifying FMS or HHS that an individual owes past-due support, the State or its agents will be required to send notice to such individual that an offset may be taken from certain Federal payments otherwise payable to such individual. The notice shall inform the individual owing the past-due support of the type and amount of the support owed, as well as such individual's right to a review of the State's determination that past-due support is owed or of the amount owed. The State will certify that the requirements of this regulation and applicable State law have been met.

Section by Section Analysis

(a) Definitions

Administrative Offset. Administrative offset has the same meaning as found at 31 U.S.C. 3701(a)(1) except that as used in this rule the term is limited to the offsetting of payments to collect past-due support.

Debt. As used in this rule, the term "debt" is limited to debt based on past-due support. Debt based on past-due support is among the many kinds of debts subject to collection by administrative offset and encompassed by the statutory definition of debt found at 31 U.S.C. 3701(b) (1) and (2). The definition of debt contained in this rule does not alter the statutory definition. It merely limits the scope of the rule to debt based on past-due support.

Disbursing Official. Disbursing official means an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law. It includes disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other Government corporation, any disbursing official of the United States designated by the Secretary of the Treasury, or any disbursing official of any other executive department or agency that disburses Federal payments.

Past-Due Support. Past-due support means the amount of support determined under a court order or an order of an administrative procedure established under State law for support and maintenance of a child or of a child and the parent with whom the child is living, which has not been paid. Unless so limited by court order or under State law or procedure, the term "child" as used in this definition is not intended to be limited to minor children.

State. Treasury considered including legal subdivisions of States within the definition of "State" to ensure that there were no impediments to collecting past-due support being enforced at, for example, the county level. Legal

subdivisions of States were not included in the definition of "State" because of concerns about the potential impact on current relationships between States and their legal subdivisions in the collection of past-due support. The public is invited to comment on the impact of including or excluding legal subdivisions of States in the definition of "State" as well as on any other provision of this rule.

(b) General Rule

Paragraph (b) states the general rule that disbursing officials of FMS and other disbursing officials of the Federal Government will offset Federal payments to collect past-due support. States enforcing past-due support may notify FMS of past-due support either by entering into an agreement with FMS and requesting that the offset be conducted or by notifying HHS. Amounts offset will be forwarded to the State less any fee charged for the offset.

(c) Agreements

Paragraph (c) states that FMS may, within its discretion, enter into an agreement with a State for disbursing officials of FMS and other Federal disbursing officials to collect past-due support by administrative offset. The agreement will contain requirements that FMS considers appropriate to facilitate the offset such as the manner and time frames for submitting debts to FMS; requirements for updating debts; and other procedures to ensure offsets are properly made. The agreement also will require that States have procedures in place for collecting debt by administrative offset including procedures for ensuring that individuals who owe past-due support are provided with notice and an opportunity to be heard before the debt is referred to FMS for offset. There is a strong Federal and State interest in ensuring that parents meet their child support obligations. The failure of some parents to meet their child support obligations weakens families and increases State and Federal welfare expenditures. Thus, agreements entered into between FMS and a State for the collection of past-due support by administrative offset are of mutual benefit to both the State and FMS and are therefore considered reciprocal. There is no requirement that States offset their payments to collect debts owed to the Federal Government and thus the request for offset from the State may come from the appropriate official of the State responsible for enforcing past-due support rather than a State disbursing official.

(d) Notification to FMS of Past-Due Support

Paragraph (d) describes the procedures which must be followed for each debt when a State notifies FMS or HHS of past-due support for purposes of collection by administrative offset. More specific instructions regarding the formatting of information and the required data elements will be provided to States.

States which are enforcing a past-due support order issued by another State or otherwise have knowledge that another State is involved in enforcing a particular past-due support order, are required to inform any other State involved in enforcing the order that it has notified FMS of the past-due support. States must also notify any other State involved in enforcing the order of any amounts received as a result of an offset. The purpose of this notification is to avoid referral of the same debt from more than one State and to ensure that debt amounts are accurately maintained.

Before a debt can be referred to FMS, States must sign a certification for each debt or group of debts certifying that each debt is past-due, legally enforceable, that the notice described in paragraph (h) has been sent, and that the State has completed any requirements imposed by its own laws or procedures for collection of debts by administrative offset. The certifying official must have both the knowledge and the authority to certify to FMS, on behalf of the State, that these requirements have been met. One of the purposes of the certification is to permit the Secretary of the Treasury, as authorized by the DCIA, to waive certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, when applicable, upon certification by a State that the requirements of 31 U.S.C. 3716(a) have been met. Section 3716(a) of Title 31 sets forth the due process requirements applicable to the collection of delinquent debts owed to the Federal Government. The due process requirements applicable to the determination and collection of past-due support are established under State laws and procedures. Additionally, paragraph (h) of this rule sets forth specific due process requirements States must meet to collect past-due support under this rule. Thus, certification of compliance with both the requirements of State laws and procedures and the requirements of paragraph (h) of this rule will be considered equivalent to certification of compliance with the requirements of 31 U.S.C. 3716(a).

Any debts which are not properly certified or do not otherwise comply with the requirement of this section will not be accepted by FMS. States will be notified that a particular debt or group of debts has been rejected and will be given the reason for the rejection. Such debts may be submitted to FMS once any deficiencies noted have been resolved.

(e) Minimum Amount of Past-due Support

Paragraph (e) states that FMS will not accept debts of less than \$25.00 for collection by administrative offset. If a debt is referred to FMS which is over \$25.00 at the time it is referred, the debt will remain subject to collection by administrative offset until it is paid in full even if it falls below the \$25.00 minimum. The \$25.00 minimum is intended to ensure that FMS is not collecting debt by administrative offset where the administrative cost of collection exceeds the amount of the debt. The minimum amount may be adjusted either upward or downward by FMS. States will be notified of any adjustments.

(f) Limitations

Paragraph (f) provides that a debt properly submitted to FMS for administrative offset will remain subject to collection by offset until it is paid in full as long as the debt remains past-due and legally enforceable. A debt will be considered legally enforceable for purposes of this paragraph (f) if, under applicable State law, it may lawfully be collected by administrative offset.

(g) Notification of Changes in Status of Debt

To ensure that debts referred to FMS for collection by administrative offset remain accurate as to their amount and that amounts offset do not exceed the amount of the debt, paragraph (g) requires States to notify FMS or HHS of any decreases in the amount of a debt referred. States are also required to notify FMS or HHS if any debt should be deleted from the debtor database either because it has been paid in full or for any other reason. States are permitted to notify FMS or HHS of any increases in the amount of a debt referred to FMS as long as the State has provided proper notice to the debtor and has complied with any other requirements of State law or procedure. Where a debt represents an ongoing obligation and it is anticipated that the debt will increase on a regular basis, States should ensure that the notices sent pursuant to paragraph (h) of this regulation include such amounts.

Under paragraph (g), States will be required to report, at established time intervals, the total net adjustment made to the amount of the debt if the net adjustment results in a decrease in the debt amount. If the total net adjustment made to the debt amount during the established time interval results in an increase in the debt amount, States are encouraged, but are not required, to report the total net adjustment.

(h) Advance Notification of Intent to Collect by Administrative Offset

Paragraph (h) sets forth requirements concerning the notice and opportunity to exercise certain rights that must be provided to individuals who owe past-due support before the debt can be referred for collection by administrative offset. States must have procedures in place to afford individuals who owe past-due support the opportunity for a review as provided for under this paragraph (h) and must comply with those procedures prior to referring a debt for collection by administrative offset. Where a State intends to refer a debt which it is enforcing based upon an order issued by another State, the referring State must ensure that the individual who owes the past-due support has the opportunity for a review by either the referring State or the State which issued the order.

(i) Payments Subject to Offset

All Federal payments are subject to offset to collect past-due support except those payments described in paragraph (i). Those payments listed in paragraph (i)(1) are specifically excluded from offset to collect past-due support by the DCIA. Paragraph (i)(2) sets forth the authority of the Secretary under the DCIA to exempt additional payments from offset. Payments which may be exempted from offset under this authority are described in paragraph (k). Paragraph (i)(3) is intended to recognize that other laws may prohibit the offset of certain payments to collect past-due support. This exception applies only where another law specifically and expressly prohibits offset. For example, 38 U.S.C. 5301(a) expressly prohibits the collection of most debt by offset from certain Veterans' benefit payments. Paragraphs (i)(4) and (i)(5) reflect the DCIA provisions which exclude payments made under the Internal Revenue Code and the tariff laws of the United States from administrative offset under 31 U.S.C. 3716. Authority to offset tax refund payments to collect past-due support is found at 42 U.S.C. 664 and 26 U.S.C. 6402 and is governed by regulations at 45 CFR 303.72 and 26 CFR 301.6402-5. All other Federal

payments are subject to offset under this rule although restrictions may apply to limit the amount of a particular payment which may be offset.

(j) Special Provisions Applicable to Federal Salary Payments

Federal salary payments are included in those payments subject to offset to collect past-due support under 31 U.S.C. 3716. The special rules contained in paragraph (j) are intended to ensure that the amount of a Federal salary payment subject to offset does not exceed the limitations applicable to the garnishment of Federal pay to collect support under 15 U.S.C. 1673(b)(2) (A) and (B). The authority to offset Federal salary payments to collect past-due support is not intended to alter or supersede the authority to garnish the wages of a Federal employee who owes past-due support. Thus, this rule provides that the maximum allowable offset amount will be reduced by the amount of a garnishment order for support. For example, if a Federal employee's pay in a given pay period, after required deductions, is \$1,000 and 50% of that pay may be offset, the total amount subject to offset is \$500. If, however, there is a garnishment order for support of \$300 against that employee's pay, the amount subject to offset is reduced to \$200. Where there is a \$500 garnishment order against that employee's pay, no offset would be permitted. Because Federal salary pay is being offset to collect past-due support under 31 U.S.C. 3716, the provisions applicable to the offset of Federal salary payments to collect debt owed to the Federal Government do not apply.

(k) Payments Exempt From Administrative Offset to Collect Past-due Support Being Enforced by a State

Paragraph (k) describes the authority of the Secretary as contained in the DCIA to exempt certain payments from administrative offset. Examples of means-tested programs as defined in paragraph (k) include food stamps and Supplemental Security Income (SSI). Such programs are exempt from offset so long as a request for an exemption is properly submitted to the Secretary and the Secretary determines that such programs are, in fact, means-tested. Other payments may be exempted from offset at the discretion of the Secretary upon receipt of a proper request from the agency that issues the payment which justifies the reason for the exemption. FMS has issued standards for payment agencies to follow when for making such requests. These standards are available from FMS at the above address and at the FMS web site. In

acting on such requests, the Secretary will give due consideration to whether or not the offset would tend to substantially interfere with the purpose of the program.

(l) Fees

FMS will charge a fee to cover the costs of the offset.

The fee will be deducted from the amount offset before that amount is forwarded to the States and will only be charged when an offset has been made. States may add this fee to the amount of the debt if permitted by law. The fee charged is intended to reimburse FMS for the administrative costs of the offset and therefore may be adjusted to reflect costs. Once a fee is established, however, it will not be adjusted for a period of at least 12 months. States will be notified in advance of any adjustments.

(m) Conducting the Offset

Paragraph (m) describes how the offset program works. Debts referred to FMS are entered into a centralized debtor database. When disbursing officials of the Federal Government issue payments, those payments are compared with the debtor database to determine if the person to whom the payment is to be issued (the payee) owes a debt. If a match occurs (a match occurs when the taxpayer identification number and name of the payee match the taxpayer identification number and name of a debtor) and the payment is one which is subject to offset for the collection of past-due support, the offset will take place. Amounts offset will be forwarded to the State, less any fee. If the amount offset is less than the amount of the payment, the remainder of the payment will be forwarded to the payee. Certain payments may only be partially offset, that is, only a certain percentage of the payment may be offset to collect a debt. If the offset does not result in payment of the debt in full, offsets from future payments to the payee will continue until the debt is paid in full. Although only those debts based on past-due support are the subject of this rule, other debts as defined at 31 U.S.C. 3701(b) are also included in the database to be collected by administrative offset. Separate rules govern the collection of other debts (debts not based on past-due support) by administrative offset.

(n) Priorities

Paragraph (n) is intended to establish a priority for offsets where an individual owes more than one debt and a payment being issued to that individual (or the amount of that payment which is

available for offset) is not sufficient to satisfy all debts. Debt based on past-due support may be of more than one type depending on whether or not the debt has been assigned to the State. Paragraph (n) provides that debt which has been assigned to the State will be collected first and that debt which has not been assigned to the State will be collected only after other reductions allowed by law have been taken, such as offsets to collect debt as defined at 31 U.S.C. 3701(b) which is owed to the Federal Government.

(o) Notification of Offset

Paragraph (o) provides that once an offset has occurred, the disbursing official who conducted the offset will provide notice to the payee that the offset has occurred. A disbursing official, however, cannot be held liable for failure to provide this notice.

(p) Liability of Disbursing Officials and Payment Agencies

Paragraph (p) restates the DCIA which provides that neither the disbursing official nor the payment agency shall be liable for the amount of the offset on the basis that the underlying obligation, represented by the payment amount before the offset was taken, was not satisfied. Thus, if a payee is due a payment and receives less than the full amount of that payment because an offset has occurred, no cause of action exists against the disbursing official or the payment agency on the basis that the payment was not made in full. Paragraph (p) also provides that the payment agency will receive notice that the offset has occurred and will be provided with contact information at the State which referred the debt for offset. The purpose of this notice is to allow the payment agency to properly direct any inquiries it may receive concerning the offset.

Regulatory Analyses

It has been determined that this rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553, because FMS has determined, for the following reasons, that a comment period would be impracticable and contrary to the public interest. The DCIA was effective

immediately upon its enactment on April 26, 1996, and for the first time, authorized the collection of past-due support by administrative offset from certain Federal payments. Prior to the passage of the DCIA only debts owed to the United States could be collected by administrative offset from these Federal payments. Thus, States enforcing past-due support as well as members of the public who either owe or are owed past-due support may not be aware of the impact of the law.

Executive Order 13019 dated September 28, 1996 requires the Secretary to promptly develop and implement procedures necessary for the Secretary to collect past-due support by administrative offset. The Executive Order states that the failure of some parents to meet their child support obligations threatens the health, education, and well-being of their children. It is the intent of the Executive Order to facilitate the collection of delinquent child support obligations from persons who may be entitled to receive certain Federal payments thereby supporting our children and strengthening American families. Since this interim rule provides critical guidance needed to facilitate the offset of Federal payments to collect past-due support, FMS believes that it is in the public interest to issue this interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued.

FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, the authority to collect past-due support by administrative offset from Federal payments became effective on April 26, 1996. Inasmuch as this interim rule provides important guidance that is expected to facilitate implementation of the authority contained in the law, FMS believes that good cause exists to make the rule effective upon publication.

Since the interim rule is being issued without prior notice and public procedure pursuant to the APA, the collections of information contained in the interim rule has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments,

approved by the Office of Management and Budget (OMB) under control number 1510-0069. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Financial Management Service, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to Jacqueline Perry, Public Reports Clearance Officer, Financial Management Service, 3361 75th Avenue, Landover, Maryland 20785. Any such comments should be submitted not later than September 5, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of FMS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques and other forms of information technology.

The collections of information in this interim regulation are in § 285.1 (d)(1), (d)(2), (d)(3), (g), and (h). The information collected under § 285.1(d)(1) may include the name of the person owing past-due support, the person's social security number, the person's address, the amount of past-due support owed, and an identity code for the State. This information is needed to determine if the debtor and the payee of a Federal payment is the same person, to notify the debtor/payee of the occurrence of an offset, and to forward the money offset to the appropriate State.

The information collected under § 285.1(d)(2) shall include name and social security number of the debtor. This information is necessary to prevent duplication of reporting to FMS.

The information collection under § 285.1(d)(3) shall include a signed statement that the debt is past-due and legally enforceable and that the State has complied with all the requirements under § 285.1(h). This information is necessary to provide a waiver of certain sections of the Computer Matching and Privacy Protection Act of 1988 where

such a waiver is necessary to conduct administrative offset under this rule.

The information collected under § 285.1(g) may include changes to the name of the person owing past-due support, the person's social security number, the person's address, the amount of past-due support owed, or the identity code for the State collecting the debt. This information is needed to assure that the information concerning the debtor is accurate, which prevents erroneous offsets.

The information collected under § 285.1(h) shall include the name and address of the debtor, information concerning the existence of a past-due support debt and the intent to collect the debt by administrative offset, and a listing of the debtor's rights. This information is a prerequisite for conducting administrative offset under 31 U.S.C. 3716(a).

The collections of information under this rule is voluntary. Likely respondents to all the collections of information listed above are States, Territories, and Commonwealths of the Federal Government.

The estimated total annual reporting burden is 5562 hours. The estimated burden hours per respondent is 103 hours. The estimated number of respondents is 54. These figures represent the burden imposed by FMS. The reporting burden imposed by other agencies will be addressed by those agencies.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child Support, Claims, Debts, Privacy, Taxes.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended to read as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3716, 3720A; E.O. 13019.

2. Section 285.1 is added to part 285, subpart A, to read as follows:

§ 285.1 Collection of past-due support by administrative offset.

(a) *Definitions.* For purposes of this section:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State

government) to, or held by the United States for, a person to satisfy a debt.

Debt as used in this section is synonymous with the term past-due support.

Disbursing official includes an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another Federal law.

FMS means the Financial Management Service, a bureau of the Department of the Treasury. FMS is the designee of the Secretary of the Treasury for all matters concerning this section, unless otherwise specified.

HHS means the Department of Health and Human Services, Office of Child Support Enforcement.

Past-due support means the amount of support determined under a court order, or an order of an administrative procedure established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid.

Past-due support being enforced by the State means there has been an assignment of the support rights to the State or the State making the request for offset is providing services to individuals pursuant to 42 U.S.C. 654(5) (section 454(5) of the Social Security Act).

State means the several States of the United States. The term State also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

Secretary means the Secretary of the Treasury.

(b) *General Rule.* FMS may enter into a reciprocal agreement with a State for the collection of past-due support being enforced by the State by administrative offset from certain Federal payments. Upon notification of past-due support either directly from a State which has entered into such an agreement or from HHS, disbursing officials of FMS or any other disbursing official of the United States shall offset Federal payments which are subject to offset under this section, to collect past-due support. The amount offset, minus the offset fee, shall be forwarded to the State to be distributed in accordance with applicable laws and procedures.

(c) *Agreements.* FMS may enter into reciprocal agreements with States for disbursing officials of FMS and any other Federal disbursing official to offset certain Federal payments to collect past-due support being enforced by the State. The agreement shall contain any requirements which FMS considers

appropriate to facilitate the offset and prevent duplicative efforts and shall require States to prescribe procedures governing the collection of past-due support by Federal administrative offset. For purposes of this section, reciprocal means of mutual benefit. An agreement between FMS and a State to collect past-due support by offsetting Federal payments will be considered of mutual benefit and it is not required that States conduct administrative offsets to collect debts owed to the Federal Government. States which have entered into an agreement with FMS pursuant to this section may thereafter request, in the manner prescribed herein, that an offset be performed. Such requests shall be made by the appropriate State disbursing official which, for purposes of this section, means an appropriate official of the State agency which administers or supervises the administration of the State plan under Title IV-D of the Social Security Act.

(d) *Notification to FMS of past-due support.* (1) States notifying FMS of past-due support must do so in the manner and format prescribed by FMS. States notifying HHS of past-due support must do so in the manner and format prescribed by HHS. HHS shall notify FMS of all past-due support referred to HHS by States for collection by administrative offset provided that the requirements of paragraphs (d)(3) and (h) of this section have been met.

(2) When a State has knowledge that past-due support is being enforced by more than one State, the State notifying FMS or HHS of the past-due support must inform any other State involved in enforcing the past-due support when it refers the debt for offset and when it receives the offset amount.

(3) The notification of past-due support must be accompanied by a certification that the debt is past-due, legally enforceable, and that the State has complied with all the requirements as set forth in paragraph (h) of this section and with any requirements imposed by State law or procedure. For debts so certified, the Secretary may waive sections 552a (o) and (p) of Title 5, United States Code, where applicable, in accordance with the Secretary's authority under 31 U.S.C. 3716(f).

(4) FMS may reject a notification of past-due support which does not comply with the requirements of this section. The State will be notified of the rejection along with the reason for the rejection.

(e) *Minimum amount of past-due support.* FMS will reject a notification of past-due support where the past-due support owed is less than \$25.00. This amount may be adjusted from time to

time by FMS to ensure that the cost of collection does not exceed the debt.

(f) *Limitations.* Debts properly submitted to FMS for administrative offset will remain subject to collection by administrative offset until withdrawn by the State provided the debt remains past-due and legally enforceable.

(g) *Notification of changes in status of debt.* The State notifying FMS or HHS of past-due support shall, in the manner and in the time frames provided by FMS or HHS, notify FMS or HHS of any deletion or decrease in the amount of a debt referred for collection by administrative offset. The State may notify FMS or HHS of any increases in the amount of a debt referred for collection by administrative offset provided the State has complied with the requirements of paragraph (h) of this section with regard to those amounts.

(h) *Advance notification of intent to collect by administrative offset.* (1) The State, or FMS or HHS on behalf of the State, if the State requests and FMS or HHS agrees, shall send a written notification, at least 30 days in advance of referral of the debt for offset, to the individual owing past-due support, informing the individual that the State intends to refer the debt for collection by administrative offset against Federal payments. The notice must also inform the individual of:

(i) The nature and amount of the debt; and

(ii) The right to an administrative review by the State referring the debt or, upon the request of the individual, by the State with the order upon which the referral was based, of the determination of the State with respect to the debt and of the procedures and time frames established by the State for such reviews.

(2) Prior to referring a debt to FMS for collection by administrative offset, States must provide individuals with a reasonable opportunity to exercise the rights enumerated in paragraph (h)(1) of this section in accordance with procedures prescribed by the State.

(i) *Payments subject to offset.* Federal payments subject to offset under this section include all Federal payments except:

(1) Payments due to an individual under

(i) Title IV of the Higher Education Act of 1965;

(ii) The Social Security Act;

(iii) Part B of the Black Lung Benefits Act;

(iv) Any law administered by the Railroad Retirement Board;

(2) Payments which the Secretary determines are exempt from offset in

accordance with paragraph (k) of this section;

(3) Payments from which collection of past-due support by administrative offset is expressly prohibited by law;

(4) Payments made under the Internal Revenue Code of 1986 (except that tax refund payments are subject to offset under separate authority); and

(5) Payments made under the tariff laws of the United States.

(j) *Special provisions applicable to Federal salary payments.* (1) Unless a lower maximum offset limitation is provided by applicable State law, the maximum part of a Federal salary payment per pay period subject to offset to collect past-due support shall not exceed those amounts set forth at section 1673(b)(2) (A) and (B) of Title 15, United States Code, as follows:

(i) Fifty (50%) percent of the debtor's aggregate disposable earnings for any pay period, where the debtor asserts by affidavit, or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than the former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies. A debtor shall be considered to be supporting a spouse and/or dependent child only if the debtor provides over half of the spouse's and/or dependent child's support.

(ii) Sixty (60%) percent of the debtor's aggregate disposable earnings for any pay period where the debtor fails to assert by affidavit or establish by other acceptable evidence that he/she is supporting a spouse and/or dependent child, other than a former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies.

(2) The maximum allowable offset amount shall be reduced by the amount of any deductions in pay resulting from a garnishment order for support. Nothing in this rule is intended to alter rules applicable to processing garnishment orders for child support and/or alimony.

(3) Federal salary payments subject to offset for the collection of past-due support include current basic pay, special pay, incentive pay, retainer pay, overtime, or in the case of an employee not entitled to basic pay, other authorized pay. Aggregate disposable earnings for purposes of determining the

maximum amounts which may be offset under paragraph (j)(1) of this section is Federal salary pay remaining after the deduction of:

(i) Any amount required by law to be withheld;

(ii) Amounts properly withheld for Federal, State or local income tax purposes;

(iii) Amounts deducted as health insurance premiums;

(iv) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and

(v) Amounts deducted as normal life insurance premiums not including amounts deducted for supplementary coverage.

(4) At least 30 days in advance of offset, the disbursing official shall send written notice to the debtor of the maximum offset limitations described in paragraph (j)(1) of this section. The notice shall include a request that the debtor submit supporting affidavits or other documentation necessary to determine the applicable offset percentage limitation. The notice shall also inform the debtor of the percentage that will be deducted if he/she fails to submit the requested documentation.

(k) *Payments exempt from administrative offset to collect past-due support being enforced by a State.* The Secretary will exempt from administrative offset under this part payments made under means-tested programs when requested by the head of the Federal agency which administers the program. For purposes of this section, means-tested programs are programs for which eligibility is based on a determination that income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance. The Secretary may exempt from administrative offset under this section any other class or type of payment upon the written request of the head of the agency which authorizes the payments. In determining whether or not to grant such exemptions, the Secretary shall give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment agency's program.

(l) *Fees.* A fee which FMS has determined to be sufficient to reimburse FMS for the full cost of the offset procedure, shall be deducted from each offset amount. FMS will notify the States, annually and in advance, of the amount of the fee to be charged for each offset.

(m) *Conducting the offset.* Disbursing officials of the Department of the

Treasury, the Department of Defense, the United States Postal Service, or any other Government corporation, any disbursing official of the United States designated by the Secretary, or any disbursing official of an executive department or agency that disburses Federal payments shall offset payments subject to offset under this section to satisfy, in whole or part, a debt owed by the payee. Disbursing officials shall compare payment certification records with records of debts submitted to FMS for collection by administrative offset. A match will occur when the taxpayer identifying number and name control of a payment record are the same as the taxpayer identifying number and name control of a debt record. The taxpayer identifying number for an individual is the individual's social security number. When a match occurs and all other requirements for offset have been met, the disbursing official shall offset the payment to satisfy, in whole or part, the debt. Any amounts not offset shall be paid to the payee. The amount that can be offset from a single payment is the lesser of the amount of the debt (including interest, penalties, and administrative costs); the amount of the payment; or the amount of the payment available for offset if a statute or regulation prohibits offset of the entire amount. Debts remain subject to collection by offset until paid in full.

(n) *Priorities.* When a payee owes more than one debt which has been referred to FMS for collection by administrative offset, any offset will be applied first to past-due support assigned to a State and will be applied to any other past-due support after any other reductions allowed by law.

(o) *Notification of offset.* Disbursing officials of FMS or any other disbursing official which conducts an offset will notify the payee in writing of the occurrence of the offset to satisfy past-due support. The notice shall inform the payee of the type and amount of the payment that was offset; the identity of the State which requested the offset; and a contact point within the State that will handle concerns regarding the offset. Disbursing officials shall not be liable for failure to provide this notice.

(p) *Liability of disbursing officials and payment agencies.* Neither the disbursing official nor the agency authorizing the payment shall be liable for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied. Disbursing officials will notify the agency authorizing the payment that the offset has occurred so that the agency

authorizing the payment may direct any inquiries concerning the offset to the appropriate State.

Dated: June 30, 1997.

Russell D. Morris,
Commissioner.

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BILLING CODE 4810-35-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 026-1026; FRL-5853-1]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve the State Implementation Plan (SIP) revision concerning Kansas Air Regulation (K.A.R.) 28-19-79, Fuel Volatility, submitted by the Kansas Department of Health and Environment (KDHE). This revision sets a summertime gasoline Reid vapor pressure (RVP) limit of 7.2 pounds per square inch (psi), and 8.2 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol, for gasoline distributed in Wyandotte and Johnson Counties in Kansas. This revision is necessary to ensure that the area continues to maintain the National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This final rule is effective on August 6, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551-7494.

SUPPLEMENTARY INFORMATION: On March 24, 1997 (62 FR 13849), the EPA proposed approval of the SIP revision concerning K.A.R. 28-19-79, Fuel Volatility, submitted by KDHE. This revision, which limits the RVP of gasoline sold in the Kansas portion of the metropolitan area, is necessary to help the Kansas City area maintain the NAAQS for ozone. In accord with section 211(c)(4)(C), the EPA is able to approve this fuel control measure because the state of Kansas demonstrated that the measure is